



June 7, 2018

**VIA ELECTRONIC MAIL**

Alexia Deligianni-Brydges, Ed.D.  
President, Board of Education  
Orange Unified School District  
1401 North Handy Street  
Orange, CA 92867  
board@orangeusd.org

**RE: Adoption of Comprehensive Sexual Health Education Curriculum**

Dear Board President Deligianni-Brydges and members of the Board of Education:

I write to remind the Board of Orange Unified School District's (OUSD) continuing obligation to adopt a sexual health and HIV prevention education curriculum that is compliant with the requirements of the California Healthy Youth Act. I am aware that the Board called a special meeting on May 30th, and voted to postpone the implementation of the planned *Teen Talk* and *Apex* instruction that was to take place this school year. Despite public commentary to the contrary, to be clear, the *Teen Talk* curriculum is compliant with the California Healthy Youth Act. Although the Board is under no obligation to adopt that particular curriculum, it must adopt a compliant curriculum without delay to ensure compliance with the Education Code.

**A. The District Must Adopt Compliant Curriculum Without Delay.**

The Board must comply with the California Healthy Youth Act in a timely manner. Although the decision of which curricula to adopt and how to adopt it is within the discretion of the Board, Orange Unified is now two and a half years past the date on which the California Healthy Youth Act became law.

Comprehensive sexual health and HIV prevention education must comply with the California Healthy Youth Act. The California Healthy Youth Act includes requirements for teacher training and qualifications,<sup>1</sup> parent/guardian notification and opt-out,<sup>2</sup> and content.<sup>3</sup> School districts must provide comprehensive sexual health education at least once in middle school and once in high school. The specific content requirements for instruction in middle school and high school are set forth in section 51934 of the Education Code. A number of parents who oppose the District's proposed curricula have focused their objections, at least in

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<sup>1</sup> Cal. Educ. Code §§ 51935-51936.

<sup>2</sup> *Id.* §§ 51937-51939.

<sup>3</sup> *Id.* §§ 51933-51934.

part, on instruction relating to sexual orientation, gender, and gender identity. This is required instruction for comprehensive sexual health education, irrespective of the grade in which it is taught.<sup>4</sup>

While the District is free to create its own curricula from whole cloth, any such curriculum must meet all requirements set forth in the Education Code. Further, this endeavor cannot be used to delay the implementation of the California Healthy Youth Act in the present. Schools that are not teaching compliant comprehensive sexual health education at this point are in violation of the law.

#### **B. Parents Do Not Have the Right to Override the District's Choice of Curriculum.**

A key component of comprehensive sexual health education, as required under the California Healthy Youth Act, is communication between students and their parents, guardians, or other trusted adults about sexuality. Parents play a critical role in complementing the sex education provided in schools, and the vast majority of California parents support the provision of comprehensive sex education to their students, so that they will learn facts and develop skills for having healthy relationships and protecting their health.<sup>5</sup>

While the postponement of the *Teen Talk* and *Apex* curricula was due to the vote of the Board, so much discussion during the May 30, 2018 special meeting focused on the question of what rights parents have to determine the instruction provided to their students that it seems valuable to address that question here. California law is clear in this respect: Parents do not have the right to dictate what curriculum is used or what information is provided to students in public schools. The U.S. Court of Appeals for the Ninth Circuit has ruled that parents do not have any constitutional right “to prevent a public school from providing its students with whatever information it wishes to provide, sexual or otherwise, when and as the school determines that it is appropriate to do so.”<sup>6</sup> In reaching its decision, the court explained that “[s]chools cannot be expected to accommodate the personal, moral or religious concerns of every parent. Such an obligation would not only contravene the educational mission of the public schools, but also would be impossible to satisfy.”<sup>7</sup>

The parental notification and opt-out provisions of the California Healthy Youth Act apply only after the curriculum has been adopted. It is valuable to engage parents during the

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<sup>4</sup> Section 51933 of the Education Code—which applies to comprehensive sexual health education in every grade—requires, among other things, that instruction and materials be appropriate for use with pupils of all races, genders, sexual orientations, and cultural backgrounds. It requires that instruction and materials “teach pupils about gender, gender expression, gender identity, and explore the harm of negative gender stereotypes,” as well as “affirmatively recognize that people have different sexual orientations and, when discussing or providing examples relationships and couples, shall be inclusive of same-sex relationships.”

<sup>5</sup> Constantine, N, Jerman, P, Huang, A, *Sex Education: The Parent's Perspective*, Public Health Institute, May 2007

<sup>6</sup> *Fields v. Palmdale Sch. Dist.*, 427 F.3d 1197, 1205 (9th Cir. 2005), *aff'd*, 447 F.3d 1187 (9th Cir. 2006) (en banc).

<sup>7</sup> *Id.* at 1206.

process of selecting a curriculum for adoption. However, parents have no general right to override a district's ultimate choice of curriculum. Parents do indeed have the right to "supervise their children's education," but in the context of comprehensive sexual health and HIV prevention education, that right is limited to reviewing materials adopted by their district and opting out of instruction. As a California court recently recognized, students also have a separate right to have "access to medically and socially appropriate sexual education."<sup>8</sup>

### **C. The District Has an Affirmative Obligation to Address Incidents of Bias and Harassment Against LGBTQ Students**

Opposition to the *Teen Talk* and *Apex* curricula also appears to have been focused on elements of the curriculum that are inclusive of LGBTQ people or intended to specifically address sexual orientation, gender, gender identity, and gender expression. Comments at the May 30th special meeting and other meetings at Orange Unified and the Orange County District of Education focused on this point in particular.

To be clear - California public schools have an affirmative obligation to prevent and address bias-based bullying, harassment, and discrimination against LGBTQ students.<sup>9</sup> The Board's rejection or postponement of LGBTQ-inclusive curricula in the face of hostile comments could convey to students, parents, and district personnel that the board does not take seriously its responsibility to protect LGBTQ students and could facilitate an atmosphere of bias within the Orange Unified School District community, particularly if the Board does not now take swift action to adopt another LGBTQ-inclusive curriculum.

### **D. Conclusion**

Recently, we have been contacted by a number of OUSD parents and community members who have expressed their deep concern that the District is not providing students with the comprehensive sexual health and HIV prevention education they need and which is required by law.

The vast majority of California's parents—89 percent across all demographic groups and geographic regions, according to research conducted by the Public Health Institute—support the teaching of comprehensive sexual health education schools.<sup>10</sup> Those parents who do not wish their child to receive sexual health education may request in writing that their child be withheld from instruction.

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<sup>8</sup> *Am. Academy of Pediatrics v. Clovis Unified Sch. Dist.*, No. 12CECG02608 (Cal. Super. Ct. May 14, 2015), available at

<https://www.aclunc.org/sites/default/files/2015.05.04%20Notice%20of%20Entry%20of%20Order.pdf>.

<sup>9</sup> See CAL. EDUC. CODE §§ 201, 220.

<sup>10</sup> Constantine et al., *Sex Education: The Parent's Perspective*, *supra* note 5.

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Please let us know by **June 21, 2018** the District's firm timeline for adopting a compliant curriculum and implementing the full requirements of the California Healthy Youth Act.

As always, please do not hesitate to reach out with any question or concerns.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ruth Dawson", with a long horizontal flourish extending to the right.

Ruth Dawson  
Staff Attorney

cc: Superintendent Gunn Marie Hansen, Ph.D. (via e-mail)